

Northey Tretheway, Spokesperson
Restore Our Creek Coalition
465 East Galena Street
Butte, Montana 59701

May 20, 2019

Dear Mr. Tretheway:

The consent decree parties (CD Parties) are responding to your letter of April 18, 2019 on behalf of the Restore Our Creek Coalition (ROCC). Your April 18 letter addressed our April 11, 2019 response to ROCC's November 19 "ask" letter. Our April 11 letter was intended to explain what the CD Parties can and are willing to do to support ROCC's vision for the Silver Bow Creek corridor running from Texas Avenue to the confluence with Blacktail Creek in Butte, as described in the Silver Bow Creek Headwaters Park Vision document dated November 2016 (ROCC Vision Document) (the "Project"). We want to take this opportunity to do so again, in a comprehensive fashion.

The CD Parties' end land use proposals, offered over the last several months, include:

- A proposed commitment by the State of Montana to set aside a portion of the future Butte consent decree settlement funds that would otherwise be available for restoration in an interest-bearing account that could be used, along with money from other sources, to conduct the design work and to construct a lined creek in the corridor. If the State's funding is secured through a final Butte consent decree, this important commitment by the State could provide partial funding to further the ROCC vision for this area in the future, after remedy is implemented and the issues identified below have been addressed.
- The Atlantic Richfield Company's proposed commitment to fund and create amenities — such as native plantings with trees, park benches, wayfinding and educational opportunities, recirculating water and other landscape features — in the Diggings East, Northside Tailings, Buffalo Gulch, and Butte Reduction Works areas on property it owns or controls in connection with the implementation of the remedial elements in these areas. Atlantic Richfield is also willing to continue discussions with the community and the State regarding construction of a fishing pond at Northside Tailings. These features have been presented to the community and we believe have been generally well received. Proposed amenities for the Northside Tailings and Diggings East sites are shown in Attachment 1 to our April 11, 2019 correspondence to you (which is re-attached to this letter).
- The Montana Department of Environmental Quality's proposed commitment to construct fishing amenities in the restored Blacktail Creek area.
- Butte Silver Bow County's commitment to appropriate end land use development, and Atlantic Richfield Company's and Butte Silver Bow County's proposed designation of areas within the Silver Bow Creek corridor, on property each controls, where a lined creek could be located. These areas are shown in Attachments 2 and 3 to this correspondence.

These proposals support the CD Parties' belief that the concepts presented in the ROCC Vision Document, including a lined creek, can be accommodated adjacent to the remedial elements. To demonstrate this, we are attaching an end land use planning document that describes these proposals and would become part of the Consent Decree, if the Proposed Plan is finalized and the Consent Decree entered into.

In specific response to ROCC's request for a design and engineering feasibility study for a lined creek through the Silver Bow Creek corridor area, the CD Parties' believe that additional study is not currently appropriate for two primary reasons:

- Stakeholders, including ROCC or any other project proponent, working with other representatives of the community, must address issues related to land use, water supply, zoning, access, and infrastructure before the exact nature of the project can be developed and subjected to a full conceptual design. Resolution of these issues is necessary for development of a full conceptual design and engineering feasibility study for this or any project of this magnitude.
- Although portions of the corridor are owned by Atlantic Richfield Company or public entities (e.g., land associated with the Parrot removal is owned by Butte-Silver Bow County), some lands in the area are under private, third-party ownership. It would not be appropriate to create and distribute a design and engineering feasibility study for this Project without the consent of all potentially impacted landowners.

The recognition of the above issues by the CD Parties does not signal opposition to the ROCC vision or diminish our desire to continue to work with ROCC and other community groups and members. The CD Parties are committed to continuing to coordinate with ROCC and other community groups on appropriate end land use development for this area that is consistent with the proposed modified remedy and its important water quality objectives.

The CD Parties believe that the proposed actions and commitments listed above, which are outside of EPA's statutory authority to require, are genuine, good faith efforts to work constructively with ROCC and other community groups and members at achieving a vibrant and robust end land use development of the Silver Bow Creek area from Texas Avenue to the confluence with Blacktail Creek that will serve the Butte community well.

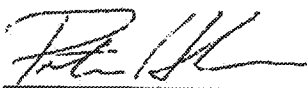
In conclusion, EPA's proposed BPSOU remedy and the State of Montana's Parrot Tailings Waste Removal Project can set the stage for ROCC's vision for this area and other areas in Butte by improving Silver Bow Creek water quality by removing waste in the Diggings East and Northside Tailings areas to allow for the construction and operation of stormwater basins; installing other stormwater basins at Grove Gulch and Buffalo Gulch to control stormwater runoff; removing substantially all of the wastes in the Parrot Tailings, Blacktail Creek and Confluence areas; and creating a protective and connected riparian corridor adjacent to Blacktail Creek and through the Butte Reduction Works area.

Coupled with the extensive cleanup efforts already accomplished in Butte, the new, proposed actions, along with the end land use commitments described above, demonstrate the CD Parties' commitment to you and the entire Butte community to provide for a healthy and thriving environment for Butte and Walkerville. We look forward to continuing to work with ROCC and others to accomplish that goal.

Sincerely,



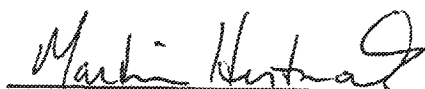
Patricia Gallery
Commercial Director
Remediation Management
Atlantic Richfield Company



Patrick Holmes
Policy Advisor for Natural Resources
Governor's Office
State of Montana



David Palmer
Chief Executive Officer
The City and County of Butte-Silver Bow
A municipal corporation and political subdivision of the State of Montana



Martin Hestmark, Director
Lands, Chemicals and
Redevelopment Division
US Environmental Protection
Agency Region 8



Betsy Smidinger, Director
Superfund and Emergency
Management Division
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Enclosures

Addendum 1 Further Remedial Elements Scope of Work

End Land Use Additions

End land use (ELU) additions will be constructed in coordination with remedy implementation. The ELU additions will be integrated adjacent to or within the geographic project areas as specified. The ELU additions will include:

1. *Recirculating Water Systems* – Construction of recirculating water systems designed to circulate one cubic foot of water per second (cfs) within the Diggings East and Buffalo Gulch primary stormwater basins, if construction and operation of such systems is consistent with achieving the primary objective for water treatment, as determined in remedial design.
2. *SBC Channel Improvements* – Construction of landscape features and tree plantings at Silver Bow Creek (SBC) above its confluence with Blacktail Creek in areas adjacent to and within the existing channel.¹
3. *Fishing Pond* – A fishing pond, approximately 1-acre in size, constructed at the Northside Tailings site, if approved by the relevant regulatory agencies.
4. *Reserved Area* – A Reserved Area between Casey Street and Kaw Avenue is identified as a potential location for a lined creek. Any future development of the lined creek concept, should that occur, is not part of the Remedy, or the Work required under the terms of this Consent Decree.

Recirculating Water Systems

Diggings East Primary Basin

Seasonal flow of approximately one cfs will be circulated within the Diggings East Primary Basin (DE Basin), if including this feature is determined to be compatible with design and operational requirements to meet water treatment objectives, as determined in remedial design. Supplemental water may be added periodically to make up evaporative and other losses and will be obtained from Butte-Silver Bow (BSB) municipal sources. Design and operational criteria for the DE Basin are described in _____. The cumulative volume of the retention pools and conveyance channel will be used to calculate the total basin volume. The recirculating water system will operate when seasonal conditions allow, in a manner that prevents damage to the system from freezing. Operation of the recirculating water system may be reduced or

¹ A State of Montana court decision known as *Silver Bow Creek Headwaters Coalition v. State of Montana*, DV-10-431 (August 17, 2015) declared that the surface area between Texas Avenue in Butte and the confluence of Blacktail and Silver Bow Creeks with Silver Bow Creek was named “Silver Bow Creek.” In prior Superfund removal and remedial documents and publications, including the 2006 Butte Priority Soils Operable Unit Record of Decision and 2011 BPSOU Explanation of Significant Differences, EPA has called this surface area the “Metro Storm Drain.” Due to The State of Montana’s involvement in this document’s issuance, and where reference to this specific section of Silver Bow Creek is necessary, further geographic descriptions, such as Silver Bow Creek “east” or “above” its confluence with Blacktail Creek are used in order for the State to comply with the court’s order. Reference to the area as “Silver Bow Creek” or “Silver Bow Creek above of its confluence with Blacktail Creek” should not be construed and is not an admission or determination by any Consent Decree Party on any procedural or substantive issue. The United States retains and reserves all its rights and authorities.

suspended during storm events when adequate flow (one cfs or greater) is present to naturally maintain flow through the pools and naturalized channel. The supplemental flow rate may be varied to maintain best management practice (BMP) treatment effectiveness, and recirculated water system operation will be suspended if such operations impede BMP treatment effectiveness.

Buffalo Gulch Primary Basin

Seasonal flow of approximately one cfs will be circulated through the Buffalo Gulch Primary Basin (BG Basin), if including this feature is determined to be compatible with design and operational requirements to meet water treatment objectives, as determined in remedial design. Supplemental water may be added periodically to make up evaporative and other losses and will be obtained from BSB municipal sources. Design and operational criteria for the BG Basin are described in _____. The cumulative volume of the retention pools and conveyance channel will be used to calculate the total basin volume. The recirculating water system will operate when seasonal conditions allow, in a manner that prevents damage to the system from freezing. Operation of the recirculating water system may be reduced or suspended during storm events of adequate flow (one cfs or greater) that are able to naturally maintain flow through the pools and naturalized channel. The supplemental flow rate may be varied to maintain BMP treatment effectiveness, and recirculating water system operation will be suspended if such operations impede BMP treatment effectiveness.

SBC Channel Improvements

In coordination with Remedy and future maintenance activities planned for the SBC channel and underlying Remedy infrastructure, aesthetic improvements within the SBC channel area will be made above its confluence with Blacktail Creek. These aesthetic improvements will occur through select reaches beginning at or near Texas Avenue to or near the confluence with Blacktail Creek as indicated on Figure 1 to this Addendum 1, Further Remedial Elements SOW ELU Additions. Improvements will include planting of trees and shrubs within the channel easement (limited to an average of one tree per fifty feet); seeding of alternative grass species; and site-specific grading, benching, or other landscape improvements at discrete locations. Aesthetic improvements will include update or removal of grouted riprap aprons. Aesthetic improvements will be consistent with protecting and maintaining the effectiveness of the Remedy.

Fishing Pond

A fishing pond will be constructed at the Northside Tailings/East Buffalo Gulch Area, if practicable and approved by the relevant regulatory agencies. The pond structure will be lined to prevent connection between pond water and groundwater, and to fully separate the lined pond from all other surface water features and prevent potential migration of fish into Silver Bow Creek or Blacktail Creek. The fishing pond will be built to an appropriate depth, and will provide adequate flow circulation, to sustain a seasonal stocked fishery. Once the pond structure is constructed, BSB will work with the appropriate state agencies to supply water and stock the pond with fish for use as a public fishing pond. Stocking and dedication of water rights to support use of the pond for fishing are not elements of the Remedy or the Work required under this Consent Decree.

STATE OF MONTANA END LAND USE ADDITIONS

Parrot Tailings Waste Removal Project Area

The anticipated end land use for the Parrot Tailings Waste Removal Project area (Removal Project) is uncertain following Removal Project completion, and future redevelopment will be guided by Butte-Silver Bow County, the property owner, and in alignment with BSB planning and growth policy and approvals. The Removal Project site will be graded, revegetated and paved as outlined in the February 20, 2018, agreement between BSB and the State. Appropriate stormwater BMPs that are required by the February 20, 2018 agreement, MS4, state law and/or local ordinance will be constructed as part of the Removal Project. Any stormwater basins and other water features located in the Removal Project area, constructed either under the February 20, 2018 agreement (if any) or BSB County's future redevelopment of its property, shall be lined to minimize infiltration to groundwater.

Blacktail Creek Area

To support the final end land use for the Blacktail Creek Area, fishing amenities will be constructed as part of the Remedy. Once the amenities are constructed, DEQ and BSB will work with the appropriate state agency to make the fishing amenities available to the public.

POTENTIAL LINED CREEK IN SILVER BOW CREEK DRAINAGE ABOVE THE CONFLUENCE

Location of a Lined Creek

A Reserved Area for the potential location of a lined creek within the Diggings East and Northside Tailings project areas is shown on Figure 2 to this Addendum 1, Further Remedial Elements SOW, End Land Use Additions. Funding for and the design, construction and future operation and maintenance of any lined creek and related landscaping in the Reserved Area or other location within the SBC drainage above the confluence of Silver Bow Creek with Blacktail Creek are not elements of the Remedy and shall not be required as Work under this Consent Decree.

Within the Reserved Area, a lined creek could be constructed, if the engineering and other analyses prepared by a project proponent confirm that design and operation of such a feature is feasible. Among other requirements and constraints that may be identified at that time, the creek bed must be lined to avoid impacts to the then-operating Remedy systems and to separate the creek from connection to or interaction with groundwater. A lined creek also could potentially be located to the east of the Northside Tailings Project Area within the Parrot Tailings Waste Removal Project area, depending on BSB's objectives for end land use and future development of the BSB County-owned property. End land use must be in accordance with local planning and zoning regulations and the associated public process required. Figure 3 to this Addendum illustrates the area where a lined creek could be located to the east of the Northside Tailings Project Area on BSB County-owned property.

Implementing the construction of a lined creek requires, among other things, resolving infrastructure issues in the area between the BSB County-owned property (near Texas Avenue) and the Reserved Area, and passage of a lined creek under Harrison Avenue in a manner that

does not compromise the effective operation of the stormwater Remedy. A source of clean water and title to real property owned by third parties must also be secured.

The approval and agreement of the Consent Decree Parties to allow any lined creek in proximity to the Remedy is expressly required, as the Remedy elements utilize the SBC channel to control stormwater, as described in the SOW and implemented under this Consent Decree.

The constructed channel located at Silver Bow Creek above its confluence with Blacktail Creek is positioned above and adjacent to other Remedy components, including the Subdrain. The Subdrain and the effluent pipeline from the Horseshoe Bend Water Treatment Plant, constructed as part of the Butte Mine Flooding Operable Unit remedial action, were built concurrently within a BSB utility right-of-way between Texas Avenue and the confluence of Silver Bow and Blacktail Creeks. In 2005, BSB County granted a permanent easement to Atlantic Richfield and others for the purpose of construction, operation and on-going repair, replacement and supplementation of such improvements.² The Easement Deed also confirms EPA's and DEQ's right of access for oversight of CERCLA-related purposes within the BSB utility right-of-way.

EPA, DEQ, and BSB and AR, on behalf of the Settling Defendants, shall each have the opportunity to review and comment on the location, design, construction, operation, maintenance and landscaping for any lined creek or other water feature proposed to be located at Silver Bow Creek above its confluence with Blacktail Creek to protect the Remedy and to ensure that the lined creek is compatible with the Remedy. Location of a lined creek or other water feature must be in accord with all existing easements and/or other applicable authorities.³ Subject to the foregoing conditions, EPA, DEQ, BSB and AR commit to work cooperatively with any project proponent during the review process to resolve the Consent Decree Parties' comments on or objections to any proposed project. The Consent Decree Parties' cooperation with a project proponent shall not require modification of the Remedy, as constructed, or contribution of funds to support any project, except as provided in the following section of this Addendum 1 (*Funding for a Potential Lined Creek*).

Funding for a Potential Lined Creek

The State will determine an appropriate amount of funding that would be deposited to an interest-bearing account to support a portion of the future costs for feasibility assessment, design and construction of a lined creek at Silver Bow Creek above its confluence with Blacktail Creek. Such funds would be used as a match for other funds secured by the project proponent, if land, water, access, infrastructure and other issues are resolved at the time a proposed project is presented by the project proponent to the Consent Decree Parties for review and approval. The source of the funds would be a portion of the payment to the State from Atlantic Richfield under this Consent Decree, if such funds are not required for DEQ's implementation of the BTC Riparian Actions described in the SOW under this Consent Decree. Any person or entity that proposes to design, construct, operate and maintain any lined creek at Silver Bow Creek above its confluence with Blacktail Creek must perform all such activities in a manner that protects and does not damage the Remedy, its components, and the end land use amenities in place at that time. The project proponent must demonstrate that financial

² Easement Deed (HSB Pipeline and MSD Improvements Easement), from BSB County (Grantor) to Atlantic Richfield Company and Montana Resources (Grantees), dated June 10, 2005, recorded at Roll 275, Card 68.

³ The CD Parties recognize that Montana Resources, as a Grantee under the Easement Deed, also must consent to any use that may interfere with its protected interests under the Easement Deed.

May 17, 2019

resources are available and committed long-term to construct, operate, maintain and repair the proposed lined creek as part of the review process required to proceed with a proposed project.

The CD Parties anticipate that the project proponent's commitments and obligations for a future lined creek project would be set forth in an enforceable agreement that provides for, among other things, oversight of project activities to support coordination with and protection of the Remedy.

